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No. 641

In the
Supreme Court of the United States

OCTOBER TERM, 1965.

AUTOMATION DEVICES, INC.,
Petitioner,

vs.

EDWARD A. SMALENBERGER, JR., individually and doing business as AUTOMATIC FEEDER COMPANY,
Respondent.

PETITIONER'S REPLY BRIEF SUPPORTING PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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The Scheffer Press, Inc.—ANdover 3-6850

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REPLY

Introduction

No attempt will be made to reply to respondent's arguments. They all go to the merits of the case and overlook the importance of the issue. It should be remarked, however, that respondent's detailed recitation of the facts presumes this case was tried. It was not.

Since filing the original Petition the importance of the issue is now highlighted by a direct conflict between the Illinois Supreme Court and the Pennsylvania Supreme Court.

NEW REASONS FOR GRANTING THE PETITION

A Conflict in the Law Has Arisen Between Illinois and Pennsylvania

In the original petition filed October 4, 1965, the decisions of the Illinois Supreme Court in *Schulenberg* v. *Signatrol* were printed. The Illinois Court reversed itself five days before the Petition was filed. It held that a trade secret could be protected even when its appropriation was embodied in unpatented products distinguishing *Compco* and *Daybrite*. Nine days after the Petition was filed, the Pennsylvania Supreme Court held the opposite on almost identical if not more compelling facts. The opinion of the Pennsylvania Supreme Court in *Van Products Company* v. *General Welding* is printed in full in the Respondent's brief. Coincidentally, the Petitioner is a Pennsylvania resident and Respondent of Illinois. If the case is tried, which law should be followed?

This Court's attention is particularly directed to the concurring opinion in the Pennsylvania Supreme Court's decision. One jurist was convinced that any related controversy having a patent issue between the parties robbed the State courts of jurisdiction in trade secret cases. *Sears* and *Compco* were relied on to reach this result. Must all cases claiming trade secrecy be tried in the Federal Courts? Only this Court can rule with finality.

Injunctive Relief May Conflict with the Anti-Trust Laws

Only this Court can ultimately approve the type of relief to be granted if a violation of a trade secret is found. Should an injunction, limiting competition, be sanctioned when it conflicts with the purpose of the Anti-Trust Laws? Or should this Court adopt a formula for damages, and rule out injunctive relief as in conflict with the Anti-Trust Laws?

This Court's Opportunity to Unify the Law

(1) This Court can take the present case where the stipulated fact is simple, and announce the law logically, reconcile the inconsistencies, and point the way for a uniformity of future decisions and orderly administration of justice.

(2) It may be some time before this Court again has a case presented to it which has not been tried, and in which the stipulated fact is as basic as in the case at bar. This Court can now clearly establish the ground rules to be followed in the future. If it waits, the situation may be hopelessly confused, with 50 different State Supreme Courts conflicting each with the other, and with their own concurrent federal courts. Which will follow Illinois? Which will follow Pennsylvania?

CONCLUSION.

The conclusion is inescapable. The issue is timely. The issue is of national importance. The issue can best be resolved by granting certiorari in this case where a complicated factual background cannot cloud the decision.

The writ prayed should issue.

Respectfully submitted,

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